

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60723

FILE: B-156550

DATE: APR 7 1976

MATTER OF: United States Park Police and Executive
Protective Service - Salary Increase

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DIGEST: Under section 501 of the District of Columbia Police and Firemen's Salary Act of 1958, as amended, officers and members of the United States Park Police and the Executive Protective Service are entitled to the same rates of compensation as those granted under that Act to the Metropolitan Police Force of the District of Columbia. By virtue of section 501, enactment of legislation by the Council of the District of Columbia increasing the salaries of the Metropolitan Police under the 1958 Act will have the effect of granting like increases to the United States Park Police and the Executive Protective Service until Congress otherwise provides.

I

By letter of February 13, 1976, the Director, National Capital Parks, United States Department of the Interior, has requested a decision concerning the salary increase entitlement of officers and members of the United States Park Police. He specifically asks whether the proposed action of the Council of the District of Columbia granting salary increases to the Metropolitan Police Force, if approved, would have the effect of granting like increases to the United States Park Police.

The question arises in view of the following provision contained at section 501 of the District of Columbia Police and Firemen's Salary Act of 1958, Pub. L. No. 85-584, 72 Stat. 485, August 1, 1958, as amended by section 111 of the Act of August 29, 1972, Pub. L. No. 92-410, 86 Stat. 639 (hereinafter "the 1958 Salary Act"):

"Sec. 501. The rates of basic compensation of officers and members of the United States Park Police and the Executive Protective Service shall be the same as the rates of compensation, including longevity increases, provided in this Act, for officers and members of the Metropolitan Police force in corresponding or similar classes."

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The above provision is included as section 833 of title 4 of the District of Columbia Code (1973 ed.), except that the words "provided in this Act" are deleted from the text and replaced by the words "provided in sections 4-823 to 4-837 * * *." The Executive Protective Service (formerly the White House Police) was brought under this provision by the Act of August 29, 1972.

Prior to 1974, all salary increases for the District of Columbia Metropolitan Police Force were granted by Congress, and, pursuant to section 501 of the 1958 Salary Act, such increases were paid to the United States Park Police and Executive Protective Service. Two recent statutes have changed the procedures. The first is the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774, December 24, 1973 (hereinafter the "Self-Government Act"), which granted general legislative powers to the elected Council of the District of Columbia. The second is the 1974 Amendment to the District of Columbia Police and Firemen's Salary Act of 1958, Pub. L. No. 93-407, 88 Stat. 1036, September 3, 1974 (hereinafter the "1974 Amendment"), which made significant changes in the procedures for providing pay increases to the police and firemen of the District of Columbia. Under the 1974 Amendment, the salaries of police and firemen are negotiated between the unions and the Mayor and are approved by the Council. No specific mention is made of the effect of those procedures on the salaries of officers and members of the United States Park Police or Executive Protective Service, all of whom are Federal employees.

Together with the Director's request for a decision, he has enclosed a letter from the Director of the Office of Management and Budget dated November 14, 1974, stating the opinion that under the 1974 Amendment future pay increases for the United States Park Police and Executive Protective Service will be determined on the basis of action by the Council of the District of Columbia until further legislative action is taken by Congress.

On the other hand, the Director also forwarded a memorandum of January 30, 1976, to the Director, National Capital Parks, from the Assistant Solicitor, National Capital Parks, concluding that the anticipated action of the Council granting pay increases to the Metropolitan Police would not, without further congressional action, have the effect of granting those increases to the United States Park Police under the 1958 Salary Act. Support for this view is mustered in part from subsection 602(a) of the Self-Government Act prohibiting the

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Council from legislating with respect to matters not restricted in application exclusively to the District and, in part, from statements in the legislative history of the 1974 Amendment, both of which are hereinafter discussed. However, the Assistant Solicitor's memorandum further states that his opinion "is based upon our view of a complex interrelationship and interpretation of statutory provisions which do not address the problem directly." He expressly recognizes "that it is possible to draw different conclusions from these authorities * * *" and he recommends that an opinion be requested from the Comptroller General.

The Acting Corporation Counsel for the District of Columbia, in a letter to this Office dated March 9, 1976, with enclosures, states his view that the Council of the District of Columbia has the statutory authority to amend the 1958 Salary Act (title 4, section 823(a), D. C. Code) to provide salary increases for District of Columbia police and firemen by virtue of the legislative powers granted it in the 1974 Amendment.

II

The Self-Government Act grants the Council of the District of Columbia general legislative powers, including authority to amend laws and regulations in effect at the effective date of the District's Charter. Sections 302 and 717(b) of that Act provide, respectively, as follows:

"SEC. 302. Except as provided in section 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States.

* * * * *

"SEC. 717. (b) No law or regulation which is in force on the effective date of title IV of this Act shall be deemed amended or repealed by this Act except to the extent specifically provided herein or

to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress * * *."

Insofar as pertinent, the Council's legislative authority is restricted by the general limitation on its powers contained in the following language of section 602(a)(3) of the Self-Government Act:

"SEC. 602. (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to--

* * * * *

"(3) enact any act, or amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District * * *."

With respect to the specific matter of laws and regulations pertaining to personnel, the Council's legislative authority is constrained, pending implementation of a District government merit system, by the following language of section 422(3) of the Self-Government Act:

"(3) * * * Personnel legislation enacted by Congress prior to or after the effective date of this section, including without limitation, legislation relating to * * * pay * * * applicable to employees of the District government as set forth in section 714(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. * * * The District government merit system shall take effect not earlier than one year nor later than five years after the effective date of this section."

The 1974 Amendment to the District of Columbia Police and Firemen's Salary Act of 1958, however, in addition to providing specific salary increases for officers and members of the Metropolitan

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Police Force, the United States Park Police and the Executive Protective Service, makes significant changes in the procedures for considering future pay increases for District police and firemen. Section 111 requires the Mayor to provide for the annual conduct of a comparative study of the rates of compensation paid officers and members of the police and fire departments in the Washington metropolitan area and other cities of comparable size and to provide the results of that study to parties involved in negotiations between the District and labor organizations representing officers and members of the police and force and fire department. Section 112(a) requires the Mayor to present the negotiated solution with respect to changes in compensation to the Council of the District of Columbia as follows:

"SEC. 112. (a) If after January 2, 1975, as a result of collective bargaining the parties have reached a negotiated solution with respect to changes in compensation for officers and members of the Police and Fire Departments, the Mayor shall recommend to the Council of the District of Columbia that said changes should be authorized and that the Congress shall be requested to appropriate sufficient funds for that purpose. The first recommendation made by the Mayor under this subsection shall be made no later than October 1, 1975."

The Corporation Counsel is of the opinion that section 112(a) has the effect of removing the limitation on Council action affecting pay imposed by section 422(3) of the Self-Government Act, supra, insofar as it applies to the compensation of District of Columbia police and firemen.

III

Bill No. 1-235 to "amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes" was adopted by the Council of the District of Columbia on March 23, 1976. The bill as adopted will become effective, if approved by the Mayor or otherwise in accordance with section 404(e) of the Self-Government Act, in the absence of disapproving congressional action within the 30-day period provided for by section 602(c) of that Act. While it provides for pay increases for officers and members of the Metropolitan Police Force and Fire Department, the

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bill does not address itself to pay increases for officers and members of the United States Park Police or Executive Protective Service. As approved by the District of Columbia Council, section 2 of that bill authorizes pay increases effective October 1, 1975, and provides, in part, as follows:

"Sec. 2. The District of Columbia Police and Firemen's Salary Act of 1958 (D. C. Code, sec. 4-823(a) et seq.) is amended as follows:

"(1) Effective on the first day of the first pay period beginning on or after October 1, 1975, the salary schedule contained in subsection (a) of section 101 of that Act (D. C. Code sec. 4-823(a)) is amended to read as follows* * *."

Regarding the effect of favorable action on the bill as approved by the Council of the District of Columbia, the language of section 501 of the 1958 Salary Act is precise in its statement that officers and members of the United States Park Police Force and the Executive Protective Service are entitled to the same rates of compensation, including longevity increases, provided officers and members of the Metropolitan Police Force under that Act. Since the language of section 2 of the bill would grant District of Columbia police a salary increase retroactively effective October 1, 1975, by amending the 1958 Salary Act, the consequent entitlement of United States Park Police and the Executive Protective Service to like increases as of that date seems clear.

We do not believe that section 602(a)(3) of the Self-Government Act prohibiting the Council from enacting legislation not restricted in its application exclusively in or to the District of Columbia precludes a finding that United States Park Police and the Executive Protective Service are entitled to the same rates of pay granted District police by Council action. The bill passed by the Council is restricted in its application solely to District police and firemen. The United States Park Police and Executive Protective Service would be affected only as a result of earlier congressional action in enacting and amending section 501 of the 1958 Salary Act to bring their salaries into conformance with those of the Metropolitan police. There is no evidence that Congress intended the 1974 Amendment to repeal section 501 or to restrict its effect to compensation changes made by Act of Congress.

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The legislative history of the 1974 Amendment does suggest that the Congress did intend to later consider recommendations which may alter salary adjustment provisions for officers and members of the United States Park Police and Executive Protective Service. The following statement appears at S. Report No. 1203, 93d Cong., 2d Sess., 13:

"The bill increases the salaries of the Park Police and the Executive Protective Service. But it does not specifically outline a procedure for considering future pay increases for members of these law enforcement agencies, whose pay levels are now linked to the D. C. Metropolitan Police Departments (D. C. Code Title 4, Section 833). The Committee has been informed by the Office of Management and Budget that the matter of procedures for handling compensation for members of these two Federal agencies is being considered, and that as soon as possible appropriate recommendations will be made to the Congress."

This statement is apparently derived from the following language contained in the Office of Management and Budget's report published in the record of the Hearings on H. R. 14212, et seq., before the Subcommittee on Revenue and Financial Affairs and the Committee on the District of Columbia, 93d Cong., 1st and 2d Sess., 259:

"The issue of the future status of U. S. Park Police and Executive Protective Service employees with respect to future salary legislation and pension funding is a complex one. These problems are currently under review by the Executive Branch. There are a number of questions relating to appropriate administrative arrangements, pay-setting mechanisms, and relationships to other Federal employees which must be resolved. While we do have these issues under active consideration, the Office of Management and Budget cannot present views on these matters at this time. Therefore, it would be premature to include any provisions relating to these police forces in legislation dealing with the District's police and firemen's pension program. As soon as these issues relating to the

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Park Police and Executive Protective Service are resolved, we will present appropriate recommendations to the Congress."

As stated above, the Office of Management and Budget is of the opinion that United States Park Police and Executive Protective Service salary increases are tied to increases for the Metropolitan Police Force granted by the Council of the District of Columbia until Congress enacts new legislation on this subject.

Consistent with the above references to contemplated legislative action involving the pay of officers and members of the United States Park Police Force and the Executive Protective Service, we note that H. R. 11131, 94th Cong., 1st Sess., a bill "[T]o amend the District of Columbia Police and Firemen's Salary Act of 1958 and other Acts to adjust the salary and other benefits received by the United States Park Police and others under those Acts, and to establish a United States Park Police Retirement and Relief Board" is currently before the House Committee on the District of Columbia. That bill would amend section 501 of the 1958 Salary Act to expressly provide that any adjustments in the annual rates of basic compensation of officers and members of the Metropolitan Police Force shall not be applicable to officers and members of the United States Park Police Force and to provide instead that the Secretary of the Interior shall make adjustments in the annual rates of basic compensation of officers and members of the United States Park Police Force in accordance with comparability pay principles.

Thus, it appears from the legislative history of the 1974 Amendment and from the bill introduced in the 94th Congress that the method of adjusting salaries of officers and members of the United States Park Police Force and the Executive Protective Service may be changed by future action of the Congress. It is equally clear, however, that the 1974 Amendment was not itself intended to alter the pay adjustment mechanism then in being under section 501 of the 1958 Salary Act. Until legislation in the nature of that proposed by H. R. 11131 is enacted, we believe that officers and members of the United States Park Police Force and the Executive Protective Service are entitled to like pay increases to those afforded District police by appropriate action of the Council of the District of Columbia amending the District of Columbia Police and Firemen's Salary Act of 1958. We, therefore, conclude that, if bill No. 1-235 as approved by the Council of the District of Columbia is enacted, officers and members

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of the United States Park Police and the Executive Protective Service will be entitled to the same rates of pay granted officers and members of the Metropolitan Police Force under section 2 of that bill.

IV

Section 4 of bill No. 1-235 provides a mechanism for granting additional pay increases effective October 1, 1976, to District of Columbia police and firemen based on the percentage rate of increase used by the President in adjusting the pay rates of Federal employees under 5 U. S. C. § 5305(a)(2). Specifically, section 4 provides that effective October 1, 1976, the Mayor shall, by applying the percentage increase used by the President in adjusting Federal salaries, "adjust the rates of pay in each class and service step on the salary schedule in section 101(a) of the District of Columbia Police and Firemen's Salary Act of 1958" and that those rates of pay shall "be the rates of pay for each position and class concerned as if those rates had been set by statute and such rates of pay shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this section."

As discussed above, section 422(3) of the Self-Government Act restricts the authority of the District of Columbia Council to enact pay legislation for its employees pending adoption of a District government merit system. As yet a merit system has not been adopted. However, with respect to the pay of officers and members of its police and fire departments, the District of Columbia considers the restriction of section 422(3) lifted by the pay negotiation procedures contained in the 1974 Amendment. While it predicates its authority to enact pay legislation for District police and firemen on the 1974 Amendment, section 4 of the bill is clearly inconsistent with the pay negotiation procedures of that Act. However, it is not necessary to consider the issues raised by section 4 of the bill. For this reason, our decision is restricted in its application to pay increases granted under section 2 of bill No. 1-235 as approved by the Council of the District of Columbia.

R. F. KELLER

Acting Comptroller General
of the United States